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To: Examiner Patricia A. Leith From: Tipton L. Randall

Fax: 703-872-9306 Pages: 5

Phone: Date: 4/28/2005

Re: Response to Office Action

Urgent For Review Please Comment Please Reply Please Recycle

• Comments:

Examiner Patricia A. Leith:

Attached is a Response to the Office Action for patent application Serial Number 10/723,697 filed November 26, 2003, by inventor Marilyn V. Zager, for which a response is due May 21, 2005. This transmittal includes the following:

Fax Coversheet 1 Page
Transmittal Form..... 1 Page
Response to Election/Restriction Office Action..... 7 Pages

Regards,



Tipton L. Randall

Reg. No. 32,626

Attachments

PTO/SB/21 (02-04)

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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

		Application Number	10/723,697
		Filing Date	26 November 2003
		First Named Inventor	Zeger, Marilyn V.
		Art Unit	1654
		Examiner Name	Leith, Patricia A.
Total Number of Pages in This Submission	5	Attorney Docket Number	TLR-5130 US

ENCLOSURES (Check all that apply)

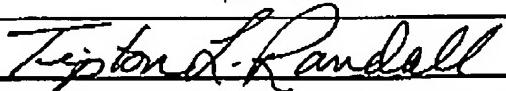
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Technology Center (TC)
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	<input type="checkbox"/> Fax Cover Sheet
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Documents(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Response to Missing Parts/Incomplete Application		
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Tipton L. Randall
Signature	
Date	28 April 2005

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name	Tipton L. Randall		
Signature		Date	28 April 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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UTILITY P A T E N T

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Zager, Marilyn V. Serial No.: 10/723,697 Filed: 26 November 2003 Title: TOPICAL COMPOSITION FOR HEIGHTENED SENSITIVITY Art Unit: 1654 Examiner: Leith, Patricia A. Agent Ref: TLR-5130 US	<p>FIRST CLASS MAILING CERTIFICATE</p> <p>I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail under 37 C.F.R. § 1.8 in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on</p> <p><u>28 April 2005</u> <small>(Date)</small></p> <p><u>Tipton Randall</u> <small>(Print Name)</small></p> <p><u>Tipton Randall</u> <small>(Signature)</small></p>
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RESPONSE TO ELECTION/RESTRICTIONS REQUIREMENT

Commissioner for Patents
 Box 1450
 Alexandria, VA 22313-1450

This Restriction/Election response is being filed in reply to the Office Action mailed 21 April, 2005 to which a response was due on or before 21 May, 2005.

Election of Invention

1.00 *The Examiner holds that the application contains claims directed to the following patentably distinct inventions:*

Group I: Claims 1-15, drawn to a composition comprising an organic fluid carrier and a capsaicinoids extract.

Group II: Claim 16, drawn to a method for heightened sensitivity and arousal comprising applying a glycerin carrier and a capsaicinoids extract.

1.10 The Examiner holds that applicant is required under 35 U.S.C. 121 to elect a single disclosed invention for prosecution on the merits.

1.20 Applicant's agent herein elects to prosecute Group 1, claims 1-15, drawn to a composition comprising an organic fluid carrier and a capsaicinoids extract.

2.00 *The Examiner holds that the application contains claims directed to the following patentably distinct species of the claimed invention: an organic fluid carrier; i.e., canola oil or lanolin.*

2.10 The Examiner holds that applicant is required under 35 U.S.C. 121 to elect a single disclosed species of organic fluid carrier for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner holds that currently, claims 1-15 are generic. The Examiner holds that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added.

2.20 Applicant's agent herein elects to prosecute claims to species glycerin as the organic fluid carrier, claims 6, 9, and 12-15, drawn to a composition comprising the organic fluid carrier glycerin and a capsaicinoids extract.

Respectfully submitted,

Date 28 April 2005

By

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TLR